

FILED

FEB 16 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROGELIO REYES-ENCINAS,

Defendant-Appellant.

No. 05-30287

D.C. No. CR-04-00095-JKS

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Alaska
James K. Singleton, Chief Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Rogelio Reyes-Encinas appeals his 41-month sentence imposed following his guilty plea to illegal reentry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 18 U.S.C. § 3742, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rogelio Reyes-Encinas contends that the district court violated his Sixth Amendment rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005), *petition for cert. filed*, No. 05-8847 (filed Jan. 23, 2006); *United States v. Moreno-Hernandez*, 419 F.3d 906, 914 & n.8 (9th Cir.), *cert. denied*, 126 S. Ct. 636 (2005); *United States v. Von Brown*, 417 F.3d 1077, 1078-79 (9th Cir. 2005) (per curiam).

AFFIRMED.